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U.S. DISTRICT COURT
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Counsel for Pocatello Dental Group, P.C.

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

POCATELLO DENTAL GROUP, P.C.,)
an Idaho professional corporation,)
)
Plaintiff,)

vs.)

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
)
Defendant.)

Case No. CIV 03-450-E-BLW

INTERDENT SERVICE CORPORATION,)
a Washington corporation,)
)
Counterclaimant,)

vs.)

POCATELLO DENTAL GROUP, P.C., an)
Idaho professional corporation; DWIGHT G.)
ROMRIELL, individually; LARRY R.)
MISNER, JR., individually; PORTER)
SUTTON, individually; ERNEST SUTTON,)
individually; GREGORY ROMRIELL,)
individually; ERROL ORMOND, individually;)
and ARNOLD GOODLIFFE, individually;)

Counterdefendants.)

**MEMORANDUM IN
SUPPORT OF MOTION TO
COMPEL DISCOVERY**

COMES NOW the Plaintiff, by and through its attorneys of record, has moved the Court, pursuant to F.R.C.P. 37(a) and Local Rule 37.1 and 37.2, for its Order compelling the Defendant InterDent Service Corporation ("ISC") to respond to the Plaintiff's discovery requests. This memorandum is offered support of that motion.

Scope of Discovery

Rule 26(b) of the Federal Rules of Civil Procedure (hereinafter "Rules") provides that:

"Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party....For good cause shown, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence."

Defendant InterDent Service Corporation ("ISC") has systematically refused to respond to legitimate discovery requests of Pocatello Dental Group ("Group"). In its motion, Group has shown "good cause" justifying this court's order directing ISC to answer the discovery requests set out in the motion.

Group has attempted, in good faith, to resolve the discovery dispute without involving the court, as required by Local Rule 37.1. Those efforts have failed. In fact, ISC did not produce any additional discovery following Group's good faith effort to resolve the dispute. No compromise on the part of ISC was offered in place of its intractable refusal to provide discovery on matters "reasonably calculated to lead to the discovery or admissible evidence."

Rule 37 permits Group to bring this motion. As stated in Rule 37(a)(3), an evasive or incomplete disclosure answer or response is to be treated as a failure to disclose, answer or respond. ISC has been evasive and incomplete in its responses to Group's discovery.

For example, Group has alleged in its Amended Complaint that ISC is in breach of the

Management Agreement because it has failed to account for "interest" collected on Group's revenues and failed to provide adequate equipment. ISC has refused to provide any information on these claims because the same or similar claims existed in its Chapter 11 bankruptcy proceeding at the same time that its reorganization plan was confirmed on October 3, 2003.

Group contends that when ISC assumed the Management Agreement it represented to the bankruptcy court, Group and ISC's creditors that it would perform all aspects of the Management Agreement in the future. To the extent ISC has not "cured" pre-confirmation defaults following its assumption of the Management Agreement, it has "breached" the Management Agreement post-confirmation. Group's discovery in large part seeks the evidence of pre-confirmation breaches only so that it can prove ISC's post-confirmation failure to perform. Such evidence, if not admissible, is "reasonably calculated to lead to the discovery of admissible evidence."

ISC's contention is that confirmation of its chapter 11 plan not only protects it from pre-confirmation breaches, but protects it also from post-confirmation breaches which are a continuation of or are of the same nature as its pre-confirmation breaches of the Management Agreement. Taken to its logical conclusion, ISC would urge the Court to conclude that it has no obligation to perform *any* of its duties under the Management Agreement post-confirmation *if it was not performing any of its obligations under the Management Agreement pre-confirmation*. Then one must ask why ISC "assumed" the Management Agreement and gave further assurances of its future performance of the Management Agreement, if it intended to continue on with its pre-confirmation failure to perform its affirmative obligations under the Management Agreement.

CONCLUSION

Group's motion is well taken and should be granted. Further delay should not be allowed by the Court, and if it occurs, such conduct by ISC should be subject to appropriate sanctions.

Dated this 12 day of July, 2004.

COOPER & LARSEN, CHTD.
Attorneys for Pocatello Dental Group

By 

Ron Kerl

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on the 12 day of July, 2004, I served a true and correct copy of the foregoing document as follows:

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